

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:)
) Chapter 13
TROY W. BROWN,)
) Case No. BKY 04-44985
Debtor.)

OBJECTIONS OF THE UNITED STATES
OF AMERICA TO THE CONFIRMATION OF THE
DEBTOR'S CHAPTER 13 PLAN AND MOTION TO DISMISS

THE UNITED STATES OF AMERICA, Internal Revenue Service ("IRS"), by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota and Roylene A. Champeaux, Assistant United States Attorney, submits the following objections to the Confirmation of Chapter 13 Plan proposed by this debtor and Motion to Dismiss:

1. The confirmation hearing is scheduled for November 18, 2004, at 10:30 a.m. at U.S. Bankruptcy Court, Courtroom 8 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

2. The Court has jurisdiction over these objections and Motion to Dismiss pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Loc. R. Bankr. P. (D. Minn.) 1070-1. This is a core proceeding. The petition commencing this Chapter 13 case was filed September 7, 2004. This case is now pending in this Court.

3. These objections and Motion to Dismiss arise under 11 U.S.C. §§ 1322(a)(2); 1325(a)(6); and 1307(c) and Fed. R. Bankr. P. 3015. These objections and Motion to Dismiss are filed under Fed.

R. Bankr. P. 9013 and 9014 and Loc. R. Bankr. P. (D. Minn.) 3015-3, 3020-1 and 3020-3.

4. The United States, IRS, has an unsecured priority claim of \$23,482.84 and an unsecured general claim of \$24,392.53 against the debtor. The total claim is \$47,875.37, as set forth in the filed Proof of Claim of the IRS, a copy of which is attached hereto as Exhibit A.

5. The IRS may have additional unsecured general and unsecured priority claims due from this debtor, but they are undetermined because the debtor has not filed federal income tax returns for the years 1998, 1999, 2000, 2001 and 2003 as explained in the Affidavit of Linda Ganyo, which is attached as Exhibit B.

6. The Plan provides for the full payment of claims entitled to priority under 11 U.S.C. § 507; however, the Plan merely estimates the amount owed to the IRS as \$1,800.00 and proposes to pay \$1,800.00. While the Plan provides that the trustee will pay the amounts actually owed as priority claims, the actual amount of the priority claim of the IRS cannot be determined until this debtor files his federal income tax returns for the years 2001 and 2003.

7. Without a determination of the actual amount of the priority claim of the IRS, the feasibility of the debtor's Plan cannot be determined in accordance with 11 U.S.C. § 1325(a)(6).

8. Failure of the debtor's Plan to provide for full payment of the allowed priority tax claim of the IRS is grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c).

WHEREFORE, for the foregoing reasons, the United States prays that the Chapter 13 Plan filed by this debtors be denied confirmation and that the case be dismissed pursuant to 11 U.S.C. § 1307(c).

Date: November 2, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
By: ROYLENE A. CHAMPEAUX
Assistant United States Attorney
Attorney ID Number 154805
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the United
States of America, IRS

UNITED STATES BANKRUPTCY COURT		DISTRICT OF MINNESOTA	PROOF OF CLAIM
Name of Debtor TROY W BROWN		Case Number 04-44985	<div style="writing-mode: vertical-rl; transform: rotate(180deg);"> RECEIVED OCT - 7 PM 12:41 2004 </div>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.			
Name of Creditor (The person or other entity to whom the debtor owes money or property): Department of the Treasury - Internal Revenue Service		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: Internal Revenue Service 316 North Robert Street Stop 5700STP St. Paul, MN 55101 Telephone number: (651) 312-7987 Creditor #: 6048166			
Account or other number by which creditor identifies debtor: see attachment		Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____			
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)			
2. Date debt was incurred: see attachment		3. If court judgment, date obtained:	
4. Total Amount of Claim at Time Case Filed: \$ <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <u>24,392.53</u> (unsecured) </div> <div style="text-align: center;"> <u>23,482.84</u> (secured) (priority) </div> <div style="text-align: center;"> <u>47,875.37</u> (Total) </div> </div> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.</p> <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		7. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>23,482.84</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,925),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>* Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
6. Unsecured Nonpriority Claim \$ <u>24,392.53</u> <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or part of your claim is entitled to priority.			
8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY <div style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> EXHIBIT <u>A.</u> </div>	
9. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.			
10. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.			
Date 10/05/2004	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>/s/ LINDA GANYO 41-02872, Bankruptcy Specialist</u>		

Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service

Form 10
Attachment

In the Matter of: TROY W BROWN
3430 228TH AVE NW
ST FRANCIS, MN 55070

Docket Number

04-44985

Type of Bankruptcy Case

Chapter 13

Date of Petition

09/07/2004

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-2179	INCOME	12/31/2001	1 UNASSESSED-NO RETURN	\$9,864.59	\$0.00
XXX-XX-2179	INCOME	12/31/2002	05/26/2003	\$2,974.00	\$193.42
XXX-XX-2179	INCOME	12/31/2003	1 UNASSESSED-NO RETURN	<u>\$10,450.83</u>	<u>\$0.00</u>
				\$23,289.42	\$193.42

Total Amount of Unsecured Priority Claims: **\$23,482.84**

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-2179	INCOME	12/31/1998	1 UNASSESSED-NO RETURN	\$4,889.29	\$0.00
XXX-XX-2179	INCOME	12/31/1999	1 UNASSESSED-NO RETURN	\$8,898.61	\$0.00
XXX-XX-2179	INCOME	12/31/2000	1 UNASSESSED-NO RETURN	<u>\$10,096.53</u>	<u>\$0.00</u>
				\$23,884.43	\$0.00

Penalty to date of petition on unsecured priority claims (including interest thereon) \$508.10

Total Amount of Unsecured General Claims: **\$24,392.53**

1 UNASSESSED TAX LIABILITIES(S) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED. WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
BKY No.04-44985

TROY W. BROWN

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

AFFIDAVIT

STATE OF MINNESOTA)

ss.

COUNTY OF RAMSEY)

Linda Ganyo, Specialist, being first duly sworn, deposes and says:

1. I am employed by Area 9 of the Internal Revenue Service Small Business/Self-Employed Division.
2. One of my duties is to review Chapter 13 Bankruptcy petitions and the Government records regarding the petitioner.
3. I have determined Troy W. Brown, has not filed Income tax returns for the years ending December 31, 1998, December 31, 1999, December 31, 2000, December 31, 2001 and December 31, 2003.

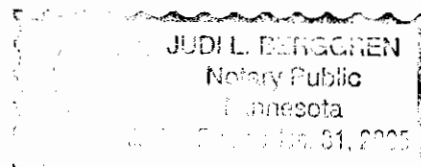
FURTHER YOUR AFFIANT SAYETH NOT.

Linda Ganyo
Linda Ganyo

Subscribed and Sworn to Before Me

This 28th Day of October, 2004.

Judi Berggren
NOTARY



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:)
) Chapter 13
TROY W. BROWN,)
) Case No. BKY 04-44985
Debtor.)

MEMORANDUM IN SUPPORT OF OBJECTIONS OF THE
UNITED STATES OF AMERICA TO THE CONFIRMATION
OF DEBTOR'S CHAPTER 13 PLAN AND MOTION TO DISMISS

THE UNITED STATES OF AMERICA, Internal Revenue Service ("IRS"), by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota and Roylene A. Champeaux, Assistant United States Attorney, submits the following Memorandum in Support of its Objections to Confirmation of Debtor's Chapter 13 Plan and Motion to Dismiss.

1. The United States, IRS, has an unsecured priority claim of \$23,482.84 and an unsecured general claim of \$24,392.53 against this debtor. The total claim is in the amount of \$47,875.37 as set forth in the filed Proof of Claim of the IRS.

2. Since no objections to the tax claims of the IRS have been filed, the claims are deemed allowed, pursuant to 11 U.S.C. § 502(a).

3. As the debtor has not filed federal income tax returns for the years 1998, 1999, 2000, 2001 and 2003, the actual tax liabilities are unknown. Any tax liabilities due for years 2001 and 2003 would be priority taxes, which must be paid in full. This debtor should be required to file these federal income tax returns

so that the tax liabilities can be fully determined and properly treated by the Plan.

4. The debtor's Plan fails to provide for adequate payments to fully pay the priority claims of the IRS under 11 U.S.C. § 507 as required under § 1322(a)(2).

5. Failure of the debtor's Plan to provide for full payment of the allowed priority tax claim of the IRS is grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c).

WHEREFORE, for the foregoing reasons, the United States prays that the Chapter 13 Plan filed by this debtor be denied confirmation and that the case be dismissed pursuant to 11 U.S.C. § 1307(c).

Date: November 1, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
By: ROYLENE A. CHAMPEAUX
Assistant United States Attorney
Attorney ID Number 154805
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the United States
of America, IRS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13

TROY W. BROWN,

Case Number: 04-44985

Debtor.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

I, Carla R. Kohl, employed by the Office of the United States Attorney, with office address 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, declares that on November 2, 2004, I served the Objections of the United States of America to Confirmation of Debtor's Chapter 13 Plan and Motion To Dismiss, Memorandum in Support of Objections and Motion to Dismiss and proposed Order on the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Richard J. Pearson, Esq.
P.O. Box 120088
New Brighton, MN 55112

Upland Mortgage
P.O. Box 11716
Philadelphia, PA 19101-9928

Jasmine Z. Keller, Esq.
Chapter 13 Trustee
12 South 6th Street, Ste. 310
Minneapolis, MN 55402

MN Dept of Economic Security
390 N. Robert St.
St. Paul, MN 55101

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Minnesota Department of Revenue
Collection Enforcement Unit
551 Bankruptcy Section
P.O. Box 64447
St. Paul, MN 55164

Troy W. Brown
3430 228th Ave. NW
St. Francis, MN 55070

Craig Anderson
Assistant Attorney General
Office of MN Attorney General
Tax Litigation Division

Ford Motor Credit Co.
3600 Minnesota Dr., Ste. 750
Minneapolis, MN 55435

1100 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2128

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: November 2, 2004 Signed: /e/ Carla R. Kohl
CARLA R. KOHL

ROBERT J. KRESSEL
United States Bankruptcy Judge